IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.254 of 2004

Commissioner of Income Tax-IV,
Chennai. Appellant

v.

M/s. Admirality Hotel, Chennai. Respondent

Tax Case Appeal preferred under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal dated 16.10.2003 in ITA. Nos.1822/Mds/94. Assessment year 1986-87 against the order of the Commissioner of Income Tax (Appeal) Madras.34. In IT/WT/GT Appeal No.242/91-92 assessment year 1986-87 against the order of the Assistant Commissioner City Circle VI (1) Madras.6. Dated 31.3.86 assessment year 1986-87.

For Appellant : Mr.J.Narayanasamy, Jr.Standing Counsel
For Respondent : Mrs.Anitha Sumanth

JUDGMENT
(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The relevant assessment year is 1986-87. The assessee is an unregistered firm. It filed its return for the above assessment year. It had deleted an immovable asset in its balance sheet. On enquiry it was found that the assessee had sold the said asset for Rs.6.00 lakhs and thereby concealed the income arising out of the capital gains. The assessing officer accordingly initiated penal proceedings and levied penalty at Rs.2,05,000/- under section 271(1)(c) of the Income Tax Act. On appeal, the Commissioner of Income Tax (Appeals), while confirming the correctness of the imposition of penalty, enhanced the same to Rs.4,10,000/- for the reasons stated therein. The assessee took the matter on appeal to the Income Tax Appellate Tribunal. The Tribunal allowed the appeal in favour of the assessee. The correctness of the same is now put in issue before this Court on the ground that the appellate Tribunal has miserably failed to note that the assessee had deleted the

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particulars of the assets from the balance sheet and the submission of the improper particulars warrants levy of penalty under section 271(1)(c) of the Income Tax Act, 1961.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The ultimate fact finding authority in its order has recorded a finding that the property was not conveyed through the registered sale deed. The possession of the property was given to the buyer on the strength of the power of attorney. Whether the action of the power of attorney would constitute a legal transfer as per the provisions of the Act was a debatable issue at that point of time. The ownership of the property by the assessee was de facto or de jure is also a debatable issue. Of course it was for this purpose section 2(47) of the Income Tax Act, 1961 has defined the word "transfer" with effect from 01.04.1988. The Tribunal further recorded a finding of fact that it could not brush aside the contention of the assessee that the assessee was under the bona fide belief that no transfer took place within the meaning of section 2 (47) of the Act during the relevant previous year and therefore there was no question of computing capital gains for the impugned assessment year. Considering the available materials, the Tribunal has recorded a categorical finding that it could not be said that the addition made in the assessment on account of capital gains amounted to concealment; nor it implied a case of furnishing of inaccurate particulars. Holding so, the Tribunal accepted the possibility of bona fide difference of opinion and has come to the conclusion that the levy of penalty under section 271 (1)(c) is unwarranted in this case.

4. It has been held by the Supreme Court in the case of T.Ashok Pai v. CIT (2007) 292 ITR 11 that the word "inaccurate" in the context of levying penalty under section 271(1)(c) signifies a deliberate omission on the part of the assessee. Such deliberate omission must be either for the purpose of concealment of income or furnishing of inaccurate particulars. The assessing officer was required to arrive at a finding that the explanation offered by the assessee, in the event of he offers one, was false and also record a finding to the effect that the explanation was not only not bona fide but also the facts relating to the same which are material to the income were not disclosed by the assessee. Thus, apart from his explanation not being bona fide, it should be found as a fact that he has not disclosed all the facts which were material for the computation of his income. The order imposing penalty was quasi criminal in nature and the burden lay on the department to establish that the assesee had concealed his income. Since the burden of proof in penalty proceedings varies from that in the assessment proceedings, a finding in an assessment proceeding that a particular receipt was income cannot automatically be adopted, though a finding in the assessment proceedings constitutes good evidence in the penalty proceedings. In the penalty proceedings the authorities must consider the matter afresh as the question has to be considered from a different angle.

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5. Having regard to the nature of the penal provisions, the Court further held that the more the law is stringent, more strict a construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as that on the prosecution.

6. The Court further held that the existence of mens rea was essentially a question of fact. The Appellate Tribunal alone as the highest authority empowered to determine the question of fact and the High Court should not ordinarily disturb the finding of fact. The finding of the Appellate Tribunal was not perverse, the High Court ought not to have interfered with the finding.

7. Applying the guidelines enunciated in the judgment above referred to the case on hand, as rightly held by the Tribunal, the ingredients of furnishing inaccurate particulars or concealment of income cannot be attributed to the assessee in the given set of facts. We are of the view that the Tribunal has given a cogent and categorical reason to arrive at such a finding and we find no perversity or irregularity in the order of the Tribunal. On the face of the factual finding arrived at by the Tribunal and in the light of the judgment referred to above, we are of the view that there is no material to interfere with the decision of the Tribunal. The appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Bench 'C' Rajaji Bhavan,
   III Floor, Besent Nagar, Chennai.90.
2. The Commissioner of Income Tax (Appeal)
   Madras.34
3. The Assistamt Commissioner
   City Circle VI (1) Madras.6
4. The Commissioner of Income Tax -IV, Chennai.

+ 1 cc to Ms.Pushya Sitaraman Advocate SR.NO.56914
+ 1 cc to Ms.Dr. Anitha Sumanth Advocate SR.NO.56653

KK(CO)
RD 26.9.07

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